(19)
1/7/02

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN ROBERT MCCOOL,	:	
Plaintiff	:	No. 4:CV-01-752
v.	:	Complaint Filed 4/30/01
THOMAS JAMES, ET AL.,	:	(Judge Muir)
Defendants	:	

FILED
WILLIAMSPORT, PA
JAN 7 2002
MARY E. D'ANDREA, CLERK
Per _____ DEPUTY CLERK

ORDER

January 7, 2002

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On April 30, 2001, John McCool, an inmate at the State Correctional Institution at Huntingdon ("SCI-Huntingdon"), filed this civil rights action pursuant to 42 U.S.C. § 1983. McCool names as Defendants several individuals employed by the Pennsylvania Department of Corrections. In the complaint McCool alleges that the Defendants violated his constitutional rights by denying him access to the courts and harassing him. The Clerk of Court assigned responsibility for this case to us but referred it to United States Magistrate Judge Thomas M. Blewitt for preliminary consideration.

On December 11, 2001, Magistrate Judge Blewitt filed a report in which he recommended that a pending motion for summary judgment filed by Defendants be granted and that judgment be entered in favor of Defendants and against McCool. Objections to the report of a Magistrate Judge may be filed within 10 days

after the report is served on the parties. M.D. Pa. Local Rule 72.31. McCool did not file objections.

When no objections are filed to the report of a Magistrate Judge, we need only review that report as we in our discretion deem appropriate. Thomas vs. Arn, 474 U.S. 140, 151-52 (1985).

Magistrate Judge Blewitt recommended that summary judgment be entered in favor of Defendants with regard to McCool's claim that he was denied access to the courts because McCool failed to allege an actual injury. The law is clear that in order to prove such a claim a plaintiff must demonstrate actual injury, that is an instance where the plaintiff was actually denied access to the courts. Lewis vs. Casey, 518 U.S. 343 (1996). McCool failed to allege such injury and has presented no evidence demonstrating such injury. Consequently, it is appropriate to grant summary judgment in favor of Defendants and against McCool on his claim of denial of access to the courts.

McCool also complains of conduct that he characterizes as harassment. While the Eighth Amendment protects prisoners from cruel and unusual punishment, not all tortious conduct which occurs in prison rises to the level of a constitutional violation. See Howell vs. Cataldi, 464 F.2d 272, 277 (3d Cir. 1972). The use of words, no matter how violent, cannot constitute an assault actionable under 42 U.S.C. § 1983. Johnson vs. Glick, 481 F.2d 1028, 1033 n.7 (2d Cir. 1973), cert. denied,

414 U.S. 1033 (1973). In addition, mere threatening language and gestures of an officer do not, even if true, amount to constitutional violations. Carter v. Cuyler, 415 F.Supp. 852, 856 (E.D.Pa. 1976). A claim of mere harassment is not cognizable under the Eighth Amendment or any other provision of the Constitution. Id. Defendants are entitled to summary judgment on the harassment claim.

The report of Magistrate Judge Blewitt is free from error. Because we find no error in Magistrate Judge Blewitt's report and because no objections have been filed to it, we shall adopt it as our own.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report of Magistrate Judge Blewitt dated December 11, 2001, is adopted in toto.

2. Defendants' motion for summary judgment (Doc. 8) is granted.

3. The Clerk of Court shall enter judgment in favor of Defendants and against McCool.

4. The Clerk of Court shall close this case and send a copy of this order to Magistrate Judge Blewitt.

5. Any appeal taken from this order will be deemed frivolous, without probable cause and not taken in good faith.

MUIR, U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

January 7, 2002

Re: 4:01-cv-00752 McCool v. James

True and correct copies of the attached were mailed by the clerk to the following:

John Robert McCool
SCI-P
SCI at Pittsburgh
DN4994
P.O. Box 99901
Pittsburgh, PA 15233

Maryanne Mueller Lewis, Esq.
Pennsylvania Office of Attorney General
15th Floor
Strawberry Square
Harrisburg, PA

cc:

Judge	( )		
Magistrate Judge Blewitt	(✓)	(✓)	~~Pro Se~~ Law Clerk
U.S. Marshal	( )	( )	INS
Probation	( )	( )	Jury Clerk
U.S. Attorney	( )		
Atty. for Deft.	( )		
Defendant	( )		
Warden	( )		
Bureau of Prisons	( )		
Ct Reporter	( )		
Ctroom Deputy	(✓)		
Orig-Security	( )		
Federal Public Defender	( )		
Summons Issued	( )	with N/C attached to complt. and served by: U.S. Marshal ( ) Pltf's Attorney ( )	
Standard Order 93-5	( )		
Order to Show Cause	( )	with Petition attached & mailed certified mail to: US Atty Gen ( ) PA Atty Gen ( ) DA of County ( ) Respondents ( )	
Bankruptcy Court	( )		
Other pres	(✓)		

MARY E. D'ANDREA, Clerk

DATE: 1/7/02

BY: _____
Deputy Clerk